

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 N. 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

02 MAY 20 AM 9:57

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

In the Matter of

NUMBERS RENTAL  
PROPERTIES, L.L.C.  
Omaha, Nebraska

Respondent

)  
)  
) Docket No. TSCA-7-2001-0062  
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)  
)

**CONSENT AGREEMENT AND FINAL ORDER**

This proceeding for the assessment of a civil penalty was initiated on or about July 24, 2001, pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), when the United States Environmental Protection Agency (Complainant or EPA) issued to Numbers Rental Properties, L.L.C., Omaha, Nebraska (Respondent), a Complaint and Notice of Opportunity for Hearing.

The Complaint charged Respondent with a violation of Section 409 of TSCA, 15 U.S.C. § 2689, and the regulations of 40 C.F.R. Part 745, Subpart F, which were promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851 et seq.

The Complaint proposed a civil penalty of Eleven Thousand Dollars (\$11,000) for this violation. The parties entered into negotiations in an attempt to settle the allegations contained in the Complaint; this Consent Agreement and Final Order are the result of such negotiations.

CONSENT AGREEMENT

1. For the purposes of this proceeding, Respondent admits the jurisdictional allegations of the Complaint, and neither admits nor denies the factual allegations of the Complaint.
2. Respondent waives its right to contest the allegations of the Complaint and its right to appeal the Final Order accompanying this Consent Agreement.
3. Respondent and Complainant agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.
4. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of Respondent's knowledge, it is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F.
5. Although not required by TSCA, or any other federal, state, or local law, in settlement of this matter, Respondent agrees to conduct one lead abatement project. Specifically, the Respondent agrees to have six windows in its property located at 3408½ Cass Street in Omaha, Nebraska removed and replaced with six new, double-hung vinyl replacement windows. The goal of the project is to reduce possible lead hazards. Respondent agrees to obtain prior written approval from EPA if Respondent decides to use any other type of window. Respondent agrees that the abatement project shall only be performed by a firm with whom Respondent has entered into a contract and which has been certified by the State of Nebraska to perform lead-based paint activities, as that term is defined in 40 C.F.R. § 745.223. Respondent agrees to follow all applicable state and federal laws when performing this abatement project. Respondent agrees that the abatement project shall be completed within one year of the effective date of this Consent Agreement and Final Order. Within fourteen (14) days after completion of the abatement project, Respondent agrees to provide EPA with a notarized statement indicating that the abatement project has been completed, along with an

accounting of expenses incurred on the project. Respondent agrees to include in the accounting statement a statement certifying that the expenses incurred and listed in the accounting statement are accurate and represent only those expenses for the abatement project.

6. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty in the amount of three hundred dollars (\$300), to be paid within sixty (60) days of the effective date of the Final Order.

7. Respondent understands that its failure to timely pay any portion of the penalty stated in Paragraph 5 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the rate determined by the Secretary of the Treasury (currently six percent (6%) per annum for the period January 1, 2001 through December 31, 2001) on the unpaid balance until such civil penalty and any accrued interest are paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

#### Final Order

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 et seq., and based upon the information set forth in the Consent Agreement accompanying this Final Order, IT IS HEREBY ORDERED THAT:

1. Respondent shall undertake and complete the abatement project as set forth in Paragraph 5 of the Consent Agreement.
2. In the event that Respondent fails to undertake or complete the abatement project as set forth in Paragraph 5 of the Consent Agreement, Respondent shall pay a stipulated penalty in the

amount of Two Thousand Seven Hundred Dollars (\$2,700). Such stipulated penalty shall become immediately due and payable within thirty (30) days of the scheduled completion date of the abatement project, which is set forth in Paragraph 5 of the Consent Agreement.

3. Respondent shall pay a mitigated civil penalty of three hundred dollars (\$300) within sixty (60) days of the effective date of this Final Order. Payment shall be by certified check made payable to the "United States Treasury" and remitted to:

EPA-Region 7  
c/o Mellon Bank  
P.O. Box 360748M  
Pittsburgh, Pennsylvania 15251.

4. A copy of the check must be sent simultaneously to each of the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101; and

Steven L. Sanders  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

5. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date 5-13-02

By Steven L. Sanders  
Steven L. Sanders  
Assistant Regional Counsel

RESPONDENT:  
NUMBERS RENTAL PROPERTIES, L.L.C.  
OMAHA, NEBRASKA

Date 5/8/02

By William M. Gillespie  
William M. Gillespie

Title MEMBER

IT IS SO ORDERED. This Final Order shall become effective immediately.

Robert L. Patrick  
Robert L. Patrick  
Regional Judicial Officer

Date May 17, 2002

IN THE MATTER OF Numbers Rental Properties, L.L.C., Respondent  
Docket No. TSCA-7-2001-0062

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Steven L. Sanders  
Senior Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Philip J. Lee  
Regency One Building  
10500 Regency Circle  
Suite 525  
Omaha, Nebraska 68114

and


Copy by First Class Pouch Mail to:

The Honorable Susan L. Biro  
Chief Administrative Law Judge  
U. S. Environmental Protection Agency  
401 M Street, S.W./Mail Code 1900L  
Washington, D. C. 20460

and

The Honorable Thomas W. Hoya  
Administrative Law Judge  
U. S. Environmental Protection Agency  
401 M Street, S.W./Mail Code 1900L  
Washington, D. C. 20460

Dated: 5/20/02

  
Kathy Robinson  
Regional Hearing Clerk